

# THE YAZOO CITY WHIG AND POLITICAL REGISTER.

J. A. STEVENS, Editor and Proprietor.

YAZOO CITY, (MS.) FRIDAY, MAY 22, 1840.

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## THE WHIG & REGISTER.

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FRIDAY, MAY 22, 1840.

To the Editor of the Whig.

Sir—From the proceedings of a recent whig meeting at Satilla, which I see published in the Yazoo Banner, it appears that some misapprehension is entertained by some of our whig brethren in relation to the nomination of State Senator made in this city, and a suggestion is made that a county convention should act upon the subject.

Signed by CHARLES E. MOUNT, and thirty-five other gentlemen of the Bar of the 10th Judicial District.

To His Excellency A. G. McNutt, Governor of the State of Mississippi:

The undersigned citizens of the Tenth Judicial District of said State, would respectfully suggest, that great doubt exists in relation to the legality of the appointment of a Judge and District Attorney by the Executive for this District, and they believe the citizens of this District generally would be much gratified that the whigs of the county generally would in some way express their sentiments upon the nomination, and if they deem it expedient in order to secure the election of a Whig Senator, recommend the name of some other person for that office. I will not only meet candidly with you concerning the nomination, but will give place to him, but will give him a hearty and industrious support. And I am sure that the members of the Tippecanoe Club who have communicated with me will concur in this desire for their uniform representation to me, have been that they sought no individual preference, but looked only to the election of a Whig Senator.

Signed by ROBERT COOK, and one hundred and eighty-three other respectable citizens of the 10th Judicial District.

EXECUTIVE DEPARTMENT.  
City of Jackson, May 11, 1840.

Sir—I received in due season, and have attentively considered the petition signed by yourself and thirty-five other members of the Bar of the Tenth Judicial District, suggesting doubtless to my constitutional right to appoint a Judge and District Attorney of the 10th Judicial District, and requesting me to revoke the order requiring an election to be held on the first Monday and day following in November, next for those offices, and to order the election to be held either on the fourth Monday in May or the first Monday in September, 1840, to fill the vacancies in those offices. I have also received a petition signed by one hundred and eighty-three citizens of that District, stating that "great doubt existed in relation to the legality of the appointment of a Judge and District Attorney by the Executive for that District, and they believe that the citizens generally, and almost unanimously desire the election to be brought on as soon as the necessary notices can be given for holding the election. We therefore respectfully request you to issue a writ of election, and for the same to be held as soon as the notice of election can be given, and your petitioners, as in duty due."

Signed by ROBERT COOK, and one hundred and eighty-three other respectable citizens of the 10th Judicial District.

May 18, 1840.

## CORRESPONDENCE.

By request of JUDGE BATTAILLE, we give publicity to the following lengthy correspondence, to the exclusion of other more interesting matter, for the information of our readers in this district, if information they can gather from the Governor's reply, for we are unable to gain any. We will attend to this document next week.

To his Excellency A. G. McNutt, Governor of the State of Mississippi:

The undersigned members of the Bar of the tenth Judicial District, of the State aforesaid, respectfully represent unto your Excellency, that they are anxious your Excellency should take into consideration the time designated for holding the election for Judge and District Attorney, for said District aforesaid. The time as now fixed upon by your Excellency will be entirely inconvenient, and unless changed, may be fraught with the most troublesome consequences. The day fixed upon by law for the holding of Court of Yazoo County, which is comprised in said district, is now so manifest that return cannot be had from all the offices of Judge and District Attorney of the 10th Judicial District, which the successful candidates receive their commissions in June, and until the citizens of Yazoo County, to the benefit of the full term of their Circuit Court, a matter of immense importance to them in this peculiar crisis. Another reason respectfully suggested to your Excellency is, that constitutional objections have been raised to the length of time for which your Excellency has been pleased to install the present incumbents. Whether these constitutional scruples be right or wrong is not for your petitioners to determine, but in either event, they fear the result will be equally calamitous. The public prints have noticed them abroad, and they must necessarily gain more or less weight with the community. The consequence will be, that this already sorely distressed and severely oppressed community, will be yet more heavily burdened with expensive litigation. Those persons having judgments rendered against them by the present Judiciary, will be induced to believe

that the judgments can be set aside on constitutional grounds, and thus distract the community under increased litigation, and incur heavy expense for no benefit or advantage whatever. And your petitioners would also note a root exceedingly difficult to pull up, as far as your petitioners are concerned, to learn where the cause of the election should be held, in view of the fact that that now fixed upon.

In consideration of the premises, we would respectfully suggest to your Excellency the propriety of altering the day of election fixed upon in the district, and order the same for the fourth Monday in May, or first Monday in September, so that it may best subserve the interest of the majority of the district at large, and your petitioners as in duty bound, &c.

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The high respect I entertain for the legal opinions of the gentlemen of the Bar of that District, as well as the great importance of arriving at a correct conclusion on the questions brought to my notice, has induced me to re-examine the Constitution and Laws of the State, in relation to the powers and duties of the Executive.

The Tenth and Eleventh Judicial Districts were enacted by an act of the Legislature, approved February 19th, 1840. That

act is silent as to the time when elections shall be held in those Districts, and does not prescribe how vacancies occurring in the offices of Judge and District Attorney shall be filled. The 8th Section of the Act to re-organize the Judicial Districts and to abolish the Criminal Court, simply provides that the Governor shall issue writs of election as provided by law, for the election of Judges of the Tenth and Eleventh Judicial Districts, and for the election of District Attorneys, whenever the same is requisite. The law referred to in that section is the Act of 1833, providing for the filling of

The 11th Section of the 8th Article of the Constitution provides that "the Judges of the Circuit Court shall be elected by the qualified electors of each Judicial District, and hold their offices for the term of four years, and reside in their respective districts." The 13th Section requires that "the State shall be divided into convenient districts, and that each district shall contain not less than three nor more than twelve counties" and the fifteenth section of the same Article prescribes that "a Circuit Court shall be held in each county of this State at least twice in each year." The constitutionality of the Act establishing the Tenth Judicial District is not questioned. I am surprised, however, to learn that it is contended that there were no vacancies in the offices of Judge and District Attorney of the 10th Judicial District, which the Executive was authorized to fill. The word "vacancy" is defined to be an empty space, an unfilled seat, or a post or employ left wholly unoccupied, &c. The term does not appear that the spaces so left should always be unoccupied. A House may be vacant, although it is unoccupied, and no man to an vacant when seated or appointed by the Government. It is therefore, very clear that vacancies occurred in the offices of Judge and District Attorney of the 10th Judicial District, when the law creating that district went into effect.

The thirteenth section of the fifth article of the constitution provides for the vacancies not provided for in this constitution, shall be filled in such manner as the legislature shall direct. The 13th section of the constitution provides that the legislature shall at their first session after an election to be held in every county of this state, on the first Monday in May and day following, enquire and make a full and general enquiry into the vacancies in the offices of Judge and District Attorney of the 10th Judicial District, which the Executive was authorized to fill. The word "vacancy" is defined to be an empty space, an unfilled seat, or a post or employ left wholly unoccupied, &c. The term does not appear that the spaces so left should always be unoccupied. A House may be vacant, although it is unoccupied, and no man to an vacant when seated or appointed by the Government. It is therefore, very clear that vacancies occurred in the offices of Judge and District Attorney of the 10th Judicial District, when the law creating that district went into effect.

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tive power shall direct.

Now, Sir, I am fully satisfied that

the officers of filling vacancies in public offices, the second section of that act is as follows, "first when any vacancy shall occur in any state office in the state by death, resignation, removal, or otherwise, after the general election in July, 1833, when the unexpired term of the office so vacated shall exceed one year, the same shall be filled by the Executive appointment, and when any vacancy shall occur in any such office when the unexpired term thereof shall have more than one year to run, it shall be the duty of the Governor when notified of such vacancy or vacancies, to issue a writ or writs of election, removing an election to be held to fill the unexpired term of said office in the particular district, or in the state, as the case may be, which election shall be held in the case of filling any vacancy in the office of a district officer on thirty days notice, or in the case of a state or general officer on sixty days notice: Provided, however, that the Governor of the state may make a temporary appointment to any office, a vacancy of which occurs, to have effect and be in force, until the election so ordered by him, shall have been held, and the successor or person elected to the office, so duly qualified in the manner prescribed by the act." The convention that framed the constitution did not pretend to designate the manner in which vacancies in public offices should be filled, except in the case of Governor and Judges of the High Court of Errors and Appeals. The legislature was clothed with the sole power as prescribed by law, how vacancies, not provided for in the constitution should be filled, except in November next for two Judges of the Circuit Court, five District Attorneys, five Senators and three members of the House of Representatives of the State; all of these elections can be held to fill vacancies.

As the length of time intervening between

the issuing of the writs, and the time fixed

for the election is complained of, it is no

more than one fifth of the voters attend the

polls. Those engaged in tilling the soil,

or pursuing their honest avocations sel-

dom attend. The law only allows the Sherif

of the different counties fifty dollars per

day for an extra service. They get nothing for holding special elections—most

generally the polls are not opened at the

precincts in consequence of the non-attendance of the Inspectors of the elections or

the returning officers. I have ordered elec-

tions on the first Monday and day follow-

ing of November, for the vacancies occasioned by the demise of the Hon. Thomas T. Sterling and commissioned the Hon. Henry Blount to fill the vacancy. In February, 1839, I pur-

sued the same course in relation to a vac-

ancy in the office of District Attorney of

the 5th Judicial District. Judge Walker re-

signed his office on the 10th of June, 1839,

and L. C. Cage, Esq., the office of Dis-

trict Attorney in August, 1839. Elections were

ordered to fill both of said vacancies on the

days of the last general election.

At the commencement of the present

session of the Legislature received notice

of the decease of Judge Pay, I intended to

order the election to fill that vacancy on the

first Monday and day following in Novem-

ber next, but understanding that several gen-

lemen of the bar in whose opinion I had

great confidence, differed with me in rela-

tion to my power to make an Executive ap-

pointment to fill the vacancy, I ordered the

election to be held on the 10th and 11th

days of February, 1840. Knowing that

many cases of novelty and magnitude would

be decided at the present term of the High

Court of Errors and Appeals, I was desirous

that no doubt should rest upon the mind

of any as to the constitutional organization of the Court. The notice, however, had

been so short, that not one half of the voters

of the District will attend the polls, great

numbers will not be aware that such an elec-

tion is to be held.

I am well satisfied that the people do not

desire to be constantly called from their busi-

ness to attend special elections. I have

therefore, resolved to order elections to fill

vacancies in District and State Offices, on

the first Monday and day following in each

year. The election of Electors for President

and Vice President of the United States will

take place on the first Monday in November

next; there will be a full turn out of the

voters of the whole State, a fair expression

of public opinion will be ensured in the elec-

tion of State and District officers, and the

heavy expense attendant on special elections

will be saved.

Andrew Hays, Esq., was Prosecuting At-

torney in the Nashville District, Tennessee,

for about a dozen years; he is eminently

qualified for the office I have appointed him

to fill. I feel confident that he will discharge

the duties of the office ably and faithfully,

and cause the laws to be respected; and just

and vindicated.

A. G. McNUTT.

Executive Department, City of Jackson,

February 10th, 1840.

the Sheriff, and in case of a vacancy in a

District Office, he is required to give thirty

days notice. The act leaves it discretionary

with the Executive in issuing his writs to

fill a vacancy, to require the Sheriff to hold

the election at such time as he may think

proper. If the writ must in all cases require

the election to be held exactly thirty days

after the reception of notice of a vacancy,